**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| ATLAS AIR, INC. and SOUTHERN AIR, INC.,<br><br>Plaintiffs,<br>v.<br><br>INTERNATIONAL BROTHERHOOD OF TEAMSTERS; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION; and AIRLINE PROFESSIONALS ASSOCIATION OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 1224,<br><br>Defendants. | Civil Action No. |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND TO COMPEL ARBITRATION**

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## PRELIMINARY STATEMENT

Plaintiffs Atlas Air, Inc. ("Atlas") and Southern Air, Inc. ("Southern Air") (collectively, "Plaintiffs") seek an order under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq*., to compel the International Brotherhood of Teamsters ("IBT"), International Brotherhood of Teamsters, Airline Division ("IBT Airline Division"), and Airline Professionals Association of the International Brotherhood of Teamsters, Local Union No. 1224 ("Local 1224," and together with IBT and IBT Airline Division, "Defendants")—the bargaining representatives of all pilots employed by Plaintiffs—to arbitrate RLA "minor disputes." Minor disputes involve the interpretation and application of the collective bargaining agreements governing the rates of pay, rules, and working conditions of pilots, and Defendants have refused to comply with the mandatory arbitration procedures for such disputes as required by the RLA.

Atlas and Southern Air have announced that they are merging their operations. The collective bargaining agreements governing the Atlas pilots and the Southern Air pilots each contain provisions governing the negotiation of a joint collective bargaining agreement ("JCBA") in the event that either carrier is involved in a merger. Plaintiffs contend that these contractual provisions are applicable in the present circumstances and that Defendants must negotiate for a JCBA in accordance with the merger provisions. Defendants disagree and contend that these contractual provisions are not applicable.

Under the RLA, disputes regarding "the interpretation or application of agreements concerning rates of pay, rules or working conditions," such as this one, are known as minor disputes, which fall within the "mandatory, exclusive and comprehensive" jurisdiction of the appropriate board of adjustment for final and binding arbitration. 45 U.S.C. § 184.

In accordance with the mandate of the RLA, Atlas and Defendants have established in their collective bargaining agreement an arbitration system board of adjustment to resolve grievances regarding the interpretation and application of the Atlas collective bargaining agreement (the "Atlas System Board"). Atlas has filed a management grievance for arbitration before the Atlas System Board, alleging that Defendants have refused to negotiate for a JCBA in accordance with the merger provisions of the Atlas collective bargaining agreement. The Atlas management grievance concerns the interpretation and application of the Atlas collective bargaining agreement, and therefore, is a minor dispute, which must be arbitrated by Plaintiffs and Defendants pursuant to the requirements of the RLA before the Atlas System Board. Defendants have refused to arbitrate Atlas's management grievance before the Atlas System Board, despite their duty to do so under the RLA. Consequently, Atlas now seeks an order compelling Defendants to arbitrate the Atlas management grievance before the Atlas System Board.

In accordance with the mandate of the RLA, Southern Air and Defendants have established in their collective bargaining agreement an arbitration system board of adjustment to resolve grievances regarding the interpretation and application of the Southern Air collective bargaining agreement (the "Southern Air System Board"). Southern Air has filed a management grievance for arbitration before the Southern Air System Board, alleging that Defendants have refused to negotiate for a JCBA in accordance with the merger provisions of the Southern Air collective bargaining agreement. The Southern Air management grievance concerns the interpretation and application of the Southern Air collective bargaining agreement, and therefore, is a minor dispute, which must be arbitrated by Plaintiffs and Defendants pursuant to the requirements of the RLA before the Southern Air System Board. Defendants have refused to arbitrate Southern Air's management grievance before the Southern Air System Board, despite their duty to do so under the RLA. Consequently, Southern Air now seeks an order compelling Defendants to arbitrate the Southern Air management grievance before the Southern Air System Board.

This motion raises a purely legal issue, and the minimal facts necessary for the Court to resolve this motion are not in dispute. Because the law clearly requires Defendants to arbitrate Plaintiffs' grievances, Plaintiffs are entitled to summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

## STATEMENT OF FACTS

### A. The Collective Bargaining Agreements Between Plaintiffs And Defendants

Both Atlas and Southern Air are commercial air carriers with national and international operations. (Statement of Undisputed Material Facts ("Fact Statement") ¶ 1.) IBT is the certified collective bargaining representative of the Atlas and Southern Air pilots under the RLA. (*Id.* ¶ 2.) Local 1224 is the local collective bargaining agent designated by the IBT through IBT Airline Division to represent the Atlas and Southern Air pilots. (*Id.*)

Atlas and IBT Airline Division are parties to a collective bargaining agreement governing the rates of pay, rules, and working conditions of the Atlas pilots (the "Atlas CBA"). (*Id.* ¶ 3.) The Atlas CBA became effective on September 8, 2011, and became amendable on September 8, 2016. (*Id.*) Southern Air and IBT Airline Division, Local 1224 are parties to a collective bargaining agreement governing the rates of pay, rules, and working conditions of the Southern Air pilots (the "Southern Air CBA"). (*Id.* ¶ 4.) The Southern Air CBA became effective on November 6, 2012, and became amendable on November 6, 2016. (*Id.*)

Consistent with the mandates of the RLA, Atlas and Defendants have established the Atlas System Board. (*Id.* ¶ 5.) Section 21 of the Atlas CBA provides that the Atlas System Board "shall have jurisdiction over all disputes between a Crewmember and the Company, or between the Company and the Union, growing out of the interpretation or application of any of the terms of this Agreement or amendments thereto." (*Id.*) Similarly, Southern Air and Defendants have established the Southern Air System Board. (*Id.* ¶ 6.) Section 19 of the Southern Air CBA provides that the Southern Air System Board "shall have jurisdiction over disputes growing out of grievances or out of the interpretation or application of any of the terms of this Agreement." (*Id.*)

B. Defendants' Refusal To Arbitrate Atlas's Grievance

Atlas is a wholly-owned subsidiary of Atlas Air Worldwide Holdings, Inc. ("AAWH"). (*Id.* ¶ 7.) On January 19, 2016, AAWH announced that it intended to acquire Southern Air Holdings, Inc., the corporate parent of Worldwide Air Logistics Group, Inc., which in turn owned two subsidiary air carriers: Southern Air and Florida West International Airways, Inc. (*Id.* ¶ 8.) AAWH has further announced that it intends to merge the operations of Atlas and Southern Air. (*Id.*) In a February 24, 2016 press release, Defendants acknowledged that AAWH had "announced its desire to merge the Atlas and Southern airlines and pilots." (*Id.* ¶ 9.) Effective April 7, 2016, AAWH's acquisition of Southern Air Holdings, Inc. became effective, and Southern Air is now, like Atlas, a subsidiary of AAWH. (*Id.* ¶ 10.)

Section 1.F of the Atlas CBA sets forth a process for negotiating the terms of a JCBA to govern the pilots of both carriers in the event of a merger. (*Id.* ¶ 11.) Section 1.F.2.b.iii provides that:

> … in the event the Company decides there will be a complete operational merger between the Company and an affiliated air carrier, or if the Company notifies the Union of its intent to integrate the Crewmember seniority lists of the Company and an affiliated air carrier . . . . [i]f the crewmembers of the acquired carrier are represented by the Union, then the parties shall on a timely basis begin negotiations to merge the two pre-integration collective bargaining agreements into one agreement. If a merged agreement has not been executed within nine (9) months from the date that the Union presents to the Company a merged seniority list that complies with the provisions of this paragraph F. 2, the parties shall jointly submit the outstanding issues to binding interest arbitration. The interest arbitration shall commence within thirty (30) days from the conclusion of negotiations contemplated by this paragraph, and a final decision shall be issued within sixty (60) days after the commencement of the arbitration.

(*Id.*)

Since announcing the merger with Southern Air, Atlas has taken the position that Section 1.F.2.b.iii requires the negotiation of a JCBA, and has attempted to commence negotiations with Defendants. (*Id.* ¶ 12.) Defendants have taken the position that Section 1.F.2.b.iii does not apply to the current circumstances and have refused to bargain for a JCBA. (*Id.*)

In order to resolve this dispute over interpretation and application of Section 1.F.2.b.iii, Atlas filed a management grievance under the Atlas CBA on April 14, 2016. (*Id.* ¶ 13.) In its grievance, Atlas identified the following issue for arbitration before the Atlas System Board: "Is IBT and/or Airline Professionals Association | Teamsters Local Union No. 1224 violating Section 1.F.2.b.iii of the Atlas-IBT CBA by refusing to engage in negotiations for a joint collective bargaining agreement pursuant to the terms and conditions set forth therein in light of the announced operational merger of Atlas and Southern Air, Inc.?" (*Id.*)

In this management grievance, Atlas requested expedited arbitration pursuant to Section 1.H. of the Atlas CBA. (*Id.* ¶ 14.) Section 1.H. provides that any grievances based on alleged violations of "Section 1 [of the Atlas CBA] shall bypass the initial steps of the grievance process and shall be submitted, heard, and resolved through binding arbitration on an expedited basis directly before the Atlas Crewmembers' System Board of Adjustment sitting with a neutral arbitrator. The dispute shall be heard as soon as possible after submission to the System Board and decided no later than thirty (30) days after the close of hearing, unless the parties agree otherwise in writing." (*Id.*)

On April 20, 2016, Defendants indicated that they did not believe the management grievance was arbitrable before the Atlas System Board. (*Id.* ¶ 15.) Subsequently, the parties engaged in discussions for several months to resolve their disputes over Section 1.F.2.b.iii of the Atlas CBA and the management grievance. (*Id.*) These discussions have continued through February 7, 2017, but have not been successful. (*Id.*)

C. Defendants' Refusal To Arbitrate Southern Air's Grievance

The Southern Air CBA contains a merger provision that is similar to Section 1.F.2.b.iii of the Atlas CBA. (*Id.* ¶ 16.) Specifically, Section 1.B.3 of the Southern Air CBA provides:

> In the event of a merger, this Agreement shall be merged with the merging air carrier's crewmember collective bargaining agreement, if any; if such merged agreement is not completed within nine (9) months from the date an integrated Master Seniority List is submitted to the surviving entity, the parties shall submit all outstanding issues to binding interest arbitration;

(*Id.*)

In correspondence with Defendants on August 9, 2016, and again on October 21, 2016, Southern Air requested that Defendants enter into negotiations for a JCBA to cover the Atlas and Southern Air pilots. (*Id.* ¶ 17.) Southern Air also stated in its correspondence that to the extent Defendants were taking the position that Section 1.B.3 was not applicable because Atlas and Southern Air were not engaging in a "merger" within the meaning of Section 1.B.3., the disagreement would constitute a minor dispute that should be submitted to the Southern Air

System Board. (*Id.*) Southern Air requested notification if Defendants were refusing to negotiate a JCBA under Section 1.B.3, and requested expedited arbitration if this was in fact Defendants' position. (*Id.*) Defendants have not responded to Southern Air's inquiry or its request for expedited arbitration. (*Id.* ¶ 18.) Accordingly, on January 24, 2017, Southern Air filed a management grievance under the Southern Air CBA to resolve the dispute over interpretation and application of Section 1.B.3. (*Id.* ¶ 19.)

In its grievance, Southern Air identified the following issue for arbitration before the Southern Air System Board: "Is IBT and/or the Airline Professionals Association | Teamsters Local Union No. 1224 violating Section 1.B.3 of the Southern Air-IBT CBA by refusing to engage in negotiations for a joint collective bargaining agreement pursuant to the terms and conditions set forth therein in light of the merger of Atlas Air, Inc. ('Atlas') and Southern Air?" (*Id.*) Southern Air, like Atlas, also requested expedited arbitration of its grievance. (*Id.* ¶ 20.) Defendants have not responded to the Southern Air management grievance, and specifically have not agreed to arbitration before the Southern Air System Board. (*Id.* ¶ 21.)

## ARGUMENT

Summary judgment is to be granted if "there is no genuine dispute as to any material fact," thereby entitling the moving party to judgment as a matter of law. Fed. R. Civ. P. 56(a). Material facts are "facts that might affect the outcome of the suit under the governing law," and they raise a genuine dispute when the "evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In opposition to a summary judgment motion, parties "may not rely on conclusory allegations or unsubstantiated speculation" but "must produce specific facts" — i.e., evidence — showing a genuine dispute of material fact. *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998) (internal quotation marks and citation omitted). Accordingly, summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Because this dispute turns entirely on a legal issue, and the minimal facts required for the Court to rule on the legal issue are undisputed, Plaintiffs more than satisfy this standard and are entitled to summary judgment.

### A. The Disagreements Over The Interpretation And Application Of The Atlas CBA And The Southern Air CBA Are Minor Disputes Subject To Mandatory Arbitration.

Plaintiffs' grievances constitute minor disputes under the RLA. A minor dispute "grows out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." *Lindsay v. Ass'n of Prof'l Flights Attendants*, 581 F.3d 47, 51 (2d Cir. 2009) (internal quotation marks and citations omitted); *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 722-23 (1945); 45 U.S.C. § 184 ("disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions"). As courts in this Circuit have ruled, "Minor Disputes involve the application of particular provisions of an agreement that are not the subject of a proposal for change." *Indep. Fed. of Flight Attendants v. Trans World Airlines, Inc.*, No. 85-1994, 1987 U.S. Dist. LEXIS 3829, at *7 (S.D.N.Y. May 12, 1987) (internal quotation marks omitted). "In other words, . . . minor disputes [seek] to enforce [contractual rights]." *Lindsay*, 581 F.3d at 51 (quoting *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994)).[1]

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[1] Major disputes, over which a court may have jurisdiction, "arise where there is no . . . agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past." *Elgin*, 325 U.S. at 722-23.

Minor disputes fall within the "mandatory, exclusive and comprehensive" jurisdiction of the appropriate board of adjustment. *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33, 36-38 (1963) "The right of one party to place the disputed issue before the Adjustment Board, with or without the consent of the other, has been firmly established." *Id.*; *see also Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 323-24 (1972) (holding that it is "mandatory" that such disputes be submitted to the board); *see, e.g.*, *Ass'n of Flight Attendants v. United Airlines, Inc.*, 976 F.2d 102, 104 (2d Cir. 1992) (holding that minor dispute was within exclusive jurisdiction of system board); *Indep. Fed. of Flight Attendants*, 1987 U.S. Dist. LEXIS 3829, at *16 (same); 45 U.S.C. § 184. Decisions of the system board are final and binding on the parties. *See Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978).

Plaintiffs' grievances indisputably involve the interpretation and application of the Atlas and Southern CBAs. Atlas and Defendants have a disagreement over whether the procedures contained in Section 1.F.2 of the Atlas CBA, which require, among other things, negotiation of a JCBA in the event of a merger, are applicable to the present circumstances. Southern Air and Defendants similarly have a disagreement over whether the procedures contained in Section 1.B.3 of the Southern Air CBA to negotiate for a JCBA in the event of a merger apply to the present situation. These disagreements "grow[] out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions" and, as such, are minor disputes under the RLA. Accordingly, they must be resolved through final and binding arbitration before the Atlas System Board and Southern Air System Board, respectively. *See, e.g.*, *D'Avanzo of Bhd. of Ry. Carmen of Am. (Lodge 886) v. Long Island R.R. Co.*, No. 69-96, 1969 WL 11130, at *5 (E.D.N.Y. Feb. 28, 1969) (effect of contractual provision prohibiting parties from serving notices to open negotiations of collective bargaining agreement before a certain date on notice served before that date was a minor dispute); *CSX Transp., Inc. v. United Transp. Union*, 395 F.3d 365, 368-69 (6th Cir. 2005) (same).

B. The Court Has Authority To, And Should, Compel Arbitration Of Plaintiffs' Grievances Before The Atlas System Board And The Southern Air System Board.

The federal courts have the authority under the RLA to compel arbitration of disputes regarding the interpretation or application of collective bargaining agreements — i.e., minor disputes — like the present dispute between Plaintiffs and Defendants. *W. Airlines v. Int'l Bhd. of Teamsters,* 480 U.S. 1301, 1302 (1987) (a court may compel arbitration of a minor dispute before a system board even though the court lacks authority to interpret the terms of a collective bargaining agreement). An order compelling Defendants promptly to arbitrate the parties' disputes is necessary to preserve the integrity of the RLA's dispute-resolution procedures and the jurisdiction of the Atlas System Board and the Southern Air System Board. Indeed, "recognizing federal courts' limited authority to compel arbitration of minor disputes furthers one of the stated purposes of the RLA by ensuring 'the prompt and orderly settlement of all disputes growing out of grievances.' 45 U.S.C. § 151a(5)." *Int'l Bhd. of Teamsters v. Amerijet Int'l, Inc.*, No. 14-12237, 604 Fed. Appx. 841, 849 (11th Cir. Mar. 23, 2015) (remanding case to district court to issue order to compel); *see, e.g.*, *Ass'n of Flight Attendants v. United Airlines, Inc.*, 71 F.3d 915, 920 (D.C. Cir. 1995) (compelling grievance to proceed to arbitration before board of adjustment); *Air Line Pilots Ass'n v. Precision Valley Aviation, Inc.*, 855 F. Supp. 27, 28 (D. N.H. 1993) (granting motion for summary judgment to compel arbitration of minor dispute). *See also Sheehan*, 439 U.S. at 94 ("Congress endeavored to promote stability in labor-management relations in this important national industry by providing effective and efficient remedies for the resolution of . . . disputes" through arbitration boards.) ; *Bhd. of Locomotive Eng'rs*, 373 U.S. at

39 (Congress intended the remedies provided by system boards "to be the complete and final means for settling minor disputes.").

Here, the parties have established boards of adjustment, as they are required to do under the RLA, to resolve disputes over contract interpretation. As the undisputed facts establish, they have arrived at a disagreement over whether Section 1.F.2.b.iii of the Atlas CBA, and Section 1.B.3 of the Southern Air CBA, require negotiation of a JCBA where Atlas and Southern Air have agreed to merge. Because these are minor disputes under the RLA, they are for the Atlas System Board and Southern Air System Board to resolve. Hence, the Court should order Defendants to promptly, and without further resistance, arbitrate the Atlas and Southern Air grievances.

C. Defendants Have No Basis To Refuse To Comply With The RLA's Mandatory Arbitration Requirements.

1. **The Merger Provision Of The Atlas CBA Will Be Interpreted By The Atlas System Board, And The Merger Provision Of The Southern Air CBA Will Be Interpreted By The Southern Air System Board.**

In refusing to arbitrate Atlas's grievance, Defendants contend that the grievance is invalid because a decision by the Atlas System Board to require negotiation of a JCBA will necessarily affect the rights of the Southern Air pilots. This argument has no merit because Southern Air has filed a separate management grievance regarding the interpretation of Section 1.B.3 of the Southern Air CBA to be heard by the Southern Air System Board. Therefore, the Atlas System Board will decide only whether the Atlas pilots are required to negotiate for a JCBA under Section 1.F.2.b.iii of the Atlas CBA, and the Southern Air System Board will decide only whether the Southern Air pilots are required to negotiate for a JCBA under Section 1.B.3 of the Southern Air CBA. Accordingly, Defendants' position that a decision by the Atlas System Board will affect the rights of the Southern Air pilots has no merit.

### 2. This Minor Dispute Does Not Raise Statutory Questions Under The RLA.

The principal purpose of Congress in enacting the RLA was to prevent strikes or other interruptions to the nation's transportation systems. 45 U.S.C. § 151(a); *Tex. & New Orleans R.R. Co. v. Bhd. of Ry. & S.S. Clerks*, 281 U.S. 548, 565 (1930). To this end, Section 6 of the RLA, 45 U.S.C. § 156, has established what the Courts have described as a "long and drawn out" and "interminable" process for negotiating a collective bargaining agreement. *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 149 (1969) (citations omitted). Under Section 6, parties who wish to amend a collective bargaining agreement must, among other things, give notice of their intended changes, engage in bargaining in an effort to reach agreement, and seek the services of the National Mediation Board ("NMB") if they are unable to finalize a deal.[2] *See, e.g.*, *Wheeling & Lake Erie Ry. Co. v. Bhd. Of Locomotive Engr's & Trainmen*, 789 F.3d 681, 690-91 (6th Cir. 2015) (discussing bargaining process under Section 6). Only if the NMB releases the parties from mediation does a 30-day cooling off period begin, after which the parties may resort to self-help, such as a strike on the part of the union or implementation of changes to the collective bargaining agreement by the carrier. 45 U.S.C. § 155.

In the present case, through Section 1.F.2.b.iii of the Atlas CBA, and Section 1.B.3 of the Southern Air CBA, Plaintiffs and Defendants contractually agreed upon a process for formulating a new joint collective bargaining agreement, i.e., a JCBA, in the event of a merger.

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[2] In relevant part, Section 6 of the RLA provides that "[c]arriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice." 45 U.S.C. § 156.

Under both CBAs, upon a merger the parties must negotiate for the terms of a new JCBA covering the pilots at both carriers. If the parties are unable to reach agreement on a JCBA within nine months of Defendants submitting an integrated seniority list to Atlas and Southern Air, both CBAs require that all outstanding issues shall be resolved through binding interest arbitration.[3]

Defendants, however, have informed Plaintiffs that Atlas CBA Section 1.F.b.iii and Southern Air CBA 1.B.3 are effectively not enforceable by the Atlas and Southern Air System Boards with respect to the current merger because, according to IBT, those contractual provisions somehow "extinguish" statutory bargaining provisions in the RLA regarding collective bargaining obligations, and thus implicate statutory rather than contractual interpretation issues. (Fact Statement ¶ 22.)

Defendants are demonstrably wrong, for two reasons. First, the Atlas and Southern Air management grievances at issue seek only an interpretation of the existing Atlas and Southern Air CBAs. Atlas and Southern Air contend that a merger has occurred such that the procedures set forth in Section 1.F.2.b.iii of the Atlas CBA and Section 1.B.3 of the Southern Air CBA are applicable to the current situation and require negotiation of a JCBA. Defendants disagree and contend that these provisions have not been triggered by the announced merger of Atlas and Southern Air. Resolution of this narrow question is a pure contract interpretation issue — the Atlas System Board and Southern Air System Board will not be required to construe the RLA.

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[3] This contractual process for formulating a JCBA in the event of a merger was mutually used by Atlas and IBT/IBT Airline Division following the merger of Atlas and Polar Air Cargo, Inc. ("Polar") — which resulted in an interest arbitration in December 2010 and the current Atlas CBA. (Fact Statement ¶ 23.) IBT/IBT Airline Division did not challenge the applicability or enforceability of the contractual merger process as set forth in the then-current Atlas and Polar collective bargaining agreements, which were virtually the verbatim predecessors to Section 1.F.2.b.iii of the current Atlas CBA. (*Id.*) For example, Section 1.E.2.b.iii of the pre-merger Atlas CBA provided that in the event of a merger the parties must conclude a JCBA "within nine (9) months from the date that the Association presents to the Company a merged seniority list," and, if they failed to do so, "jointly submit the outstanding issues to binding interest arbitration." (*Id.*) Similarly, Section 1.D.1.d of the pre-merger Polar CBA provided that a JCBA must be "executed within nine (9) months from the date an integrated seniority list is presented to the successor [or] the parties shall jointly submit outstanding issues to binding interest arbitration." (*Id.*)

Second, to the extent that Defendants are contending that the contractual procedures for negotiating a JCBA contained in Atlas CBA Section 1.F.2.b.iii and Southern Air CBA Section 1.B.3 impermissibly displace the collective bargaining process mandated by Section 6 of the RLA, 45 U.S.C. § 156, they are wrong. Other provisions of the RLA make clear that carriers and unions may mutually agree on the bargaining procedures they will use to formulate collective bargaining agreements, even if such agreed procedures differ from the RLA Section 6 process. Specifically, Section 2, Seventh of the RLA provides that "[n]o carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements *except in the manner prescribed in such agreements or in section 156 [Section 6] of this title*." 45 U.S.C. § 152, Seventh (emphasis added). The agreed-upon merger-related bargaining process in Sections 1.F.b.iii and 1.B.3 of the Atlas and Southern Air CBAs is therefore directly and expressly permitted by the RLA.

The procedures contained in Sections 1.F.2.b.iii and 1.B.3 also are entirely consistent with the RLA's statutory objective to "avoid[] any interruption to commerce or to the operation of any carrier." *See* 45 U.S.C. § 151(a); *Tex. & New Orleans R.R. Co.*, 281 U.S. at 565. Indeed, the merger provisions at issue render the possibility of a strike and the attendant interruptions in service an impossibility, providing the parties with adequate time to negotiate an agreement, and submitting any outstanding issues to binding interest arbitration.

For these reasons, courts have upheld provisions like Sections 1.F.2.b.iii and 1.B.3, in which parties establish the procedures they will use to effect changes to rates of pay, rules, and working conditions. *See, e.g.*, *Seaboard World Airlines, Inc. v. Transp. Workers Union*, 443 F.2d 437, 439 (2d Cir. 1971) (collective bargaining agreement that provided that agreement could only be reopened for negotiation after a certain date and only with respect to compensation was valid under the RLA); *Trans Int'l Airlines, Inc. v. Int'l Bhd. of Teamsters*, 650 F.2d 949, 960-61 (9th Cir. 1980) (enforcing contract provision prohibiting strikes even when permitted under the RLA because "[t]he RLA does not, however, preclude the parties from adopting a different procedure by contract"); *Air Line Pilots Ass'n v. Alaska Airlines, Inc.*, No. 05-0897, 2005 WL 2898140, at *1 (W.D. Wash. Oct. 28, 2005) ("The Railway Labor Act . . . allows parties to follow their own contractually negotiated procedures for amending their collective bargaining agreements in lieu of the lengthy procedures set forth in the statute. For nearly thirty years, ALPA and Alaska have engaged in interest arbitration concerning various issues they were unable to resolve in direct negotiations."); *Ry. Labor Execs.' Ass'n v. Boston & Me. Corp.*, 664 F. Supp. 605, 611 (D. Me. 1987) ("It has long been established that parties governed by the RLA may, by express agreement, extend, modify, or waive certain statutory requirements . . . It is clear to the Court that ARASA might properly request a meeting date outside of the statutory thirty-day period [prescribed by Section 6]."); *Burlington N. Inc. v. R.R. Yardmasters*, Nos. 76-1750, 76-1869, 76-1937, 1976 WL 1570, at *3 (N.D. Ill. June 21, 1976) (citing *Seaboard* for the proposition that while "Defendant contends that the moratorium clause is invalid because it abrogates its right to serve notices to change existing collective bargaining agreements under Section 6 of the Railway Labor Act," "[t]he Court concludes that the moratorium clause is an appropriate means for ensuring industrial peace for a limited period of time, and thus promotes the purposes of the Act"). Thus, there is no valid question of statutory interpretation that would prevent the Atlas System Board and Southern Air System Board from resolving the minor disputes that have arisen between the parties.[4]

## CONCLUSION

For the foregoing reasons, summary should be granted and Defendants should be compelled to engage in an expedited arbitration hearing before the Atlas System Board with respect to Atlas's management grievance, pursuant to Sections 1.H and 21 of the Atlas CBA and the mandate of the RLA, and an expedited arbitration hearing before the Southern Air System Board with respect to Southern Air's management grievance, pursuant to Section 19 of the Southern Air CBA and the mandate of the RLA.

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[4] And even if this Court were to find that the parties' contractual minor dispute does involve a related question of statutory interpretation, the Second Circuit has held that the appropriate procedure in such circumstances is to defer court review of the statutory questions until the end of the arbitral process. *See, e.g.*, *Worldcrisa Corp. v. Armstrong*, 129 F.3d 71, 76 (2d Cir. 1997) ("We have recognized that district courts, despite the inapplicability of the FAA, may stay a case pursuant to the power inherent in every court to control the disposition of the causes [sic] on its docket with economy of time and effort for itself, for counsel, and for litigants." (internal quotation marks and citations omitted)); *see also Tice v. Am. Airlines, Inc.*, 288 F.3d 313, 318 (7th Cir. 2002) (staying litigation "until the [RLA minor] dispute over the agreement is resolved by the only body authorized to resolve such disputes, namely an arbitral panel").

Date: February 7, 2017
New York, New York

Respectfully submitted,

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